KETUA PENGARAH, PERTUBUHAN KESELAMATAN SOSIAL

v.

MOHD ZAILI ALI

HIGH COURT MALAYA, JOHOR BAHRU
KANG HWEE GEE J
[CIVIL APPEAL NO: 11-30-2001]
2 JULY 2003

LABOUR LAW: *Social security - Accidents while travelling - Whether accident arose out of and in the course of employment - Whether employee was travelling on a route between workplace and residence - Whether employee deviated from journey - Whether dropping off co-worker constituted a deviation - Whether route of travel material - Whether employee who deviated from journey can still claim - Primary objective of travel - Underlying purpose of s. 24 Employees Social Security Act 1969 - Purposive construction - Widest possible insurance coverage for workers*

The respondent/workman was travelling home on his motorcycle after work when he met with a road accident and was seriously injured. At the time of the accident, the respondent was carrying a co-worker as the pillion rider on his motorcycle. The route by which the respondent travelled from his workplace to his residence was the same everyday; he would drop off the co-worker (whose house was at the next parallel road) before continuing on his journey back to his residence. As a result of his injuries, the respondent who was insured under the Employees Social Security Act 1969 ('ESSA') lodged a claim with the Social Securities Organisation ('SOCSO'). SOCSO, however, relied on s. 24(2) of the ESSA and rejected the respondent's claim on the ground that "he had not suffered an employment-injury within the meaning of s. 24(1) of the ESSA as he had deviated from his journey to send the co-worker home". Aggrieved, the respondent appealed to the Social Security Appellate Board ('the Board'). In allowing the appeal, the Board held that the respondent had not deviated from the route between his workplace and his residence as he had been travelling on that same route all along, and also because s. 24 of the ESSA does not require the route between a workplace and a residence to be the most direct or shortest one as between those two points. Dissatisfied, SOCSO appealed to the High Court.

Held (dismissing the appeal):

[1] The Board had correctly appraised the evidence and arrived at the right decision. Not unlike a bus, the respondent's motorcycle was the common conveyance or mode of transport for he and his co-worker to go to work and to return home. There was thus no question of any interruption of, or deviation from, the respondent's journey merely because he had dropped off the co-worker before continuing on the route back to his residence using the motorcycle. The route by which the respondent travelled back to his residence was immaterial. (pp 168 b-g & 169 a-c)

[2] Section 24 of the ESSA is amenable to a wide and purposive interpretation. It seeks to provide a liberal insurance coverage in respect of injuries sustained by workers in the course of their employment. For this reason, the exclusionary provisions of s. 24(2) of the ESSA have to be subjected to the purposive construction that they deserve, in line with the economic objective of providing the worker with the widest possible insurance coverage. Such a construction will promote the legislative objective and economic purpose underlying the ESSA. (pp 169 c-h & 170 a-b)

[3] A worker who meets with an accident whilst going to or returning from work should be able to claim under s. 24 of the ESSA **even** if he has deviated from his journey – if the ultimate objective of his travel is to reach his workplace or residence – provided the deviation or detour is not made in furtherance of some other economic pursuit distinct from and unrelated to the obligations under his contract of employment. (p 170 c-f)

[Appeal by SOCSO dismissed; decision of Board upheld.]

Legislation referred to:
Employees' Social Security Act 1969, s. 24(2)
Interpretation Act 1948 and 1967, s. 17A

For the appellant - K Maniam; M/s Skrine
For the respondent - S Jeyakumar; M/s Rastam Singh & Co

Reported by Gan Peng Chiang

JUDGMENT

Kang Hwee Gee J:

The workman Mohd Zaili bin Ali was a production technician of FM Feedmill Sdn Bhd.

On 1 March 2000 he met with an accident while he was riding his motor cycle to return home from work. He was at the time carrying a co-worker as a pillion.

He suffered serious injuries as a result.

Since commencing employment with FM Feedmill the workman's usual mode of transportation to and from work was by a motor cycle which he shared with a co-worker who would ride pillion. The route he took at the time of the accident was the very same route that he had been taking all along. As a matter of routine he would deliver his colleague back to his own house on the next road running parallel to the road where he resided.

He was an insured person under the Employees' Social Security Act (ESSA) 1969.

Under s. 24 of the ESSA 1969:

> (1) An accident happening to an insured person shall be deemed to arise out of and in the course of his employment if the accident happens while the insured person:
>
> a) is travelling on a route between his place of residence or stay and his place of work;
>
> (b) is traveling on a journey made for any reason which is directly connected to his employment; or
>
> (c) is traveling on a journey between his place of work and the place where he takes his meal during any authorized recess.

He submitted a claim to the Employees Social Securities Organization (SOCSO) but his claim was rejected on the ground that:

> he had not suffered an employment injury within the meaning of s. 24(1) of the Employees Social Securities Act 1969 as he had deviated from his journey to send the co-worker home.

SOCSO relied on s. 24(2) to disclaim its obligation to pay the worker. The subsection reads as follows:

> If the accident under subsection (1) occurs during any interruption of, or deviation from, the insured person's journey made for any of the purposes stipulated in the same sub-section, the accident shall not be deemed to arise out of and in the course of his employment.

He appealed to the Jemaah Rayuan Keselamatan Social which allowed his appeal. In doing so this was what the Chairman of the Board said in his written award:

> The Board would have held in favour of SOCSO but for one very significant factor. The insured person started work just six months before the accident. It is the uncontradicted testimony of the insured person that ever since commencing employment he had always been accompanying his colleague on the journey to their common place of work at FM Feedmill Sdn Bhd. The route he had taken on the date of the accident was the very same route he had taken to work all this while. The accident occurred on the said route. In these circumstances the Board sees no reason to hold that he had deviated from the route between his place of residence and his place of work. It would have been a very different thing altogether if the insured person had proceeded out of his way to fetch a friend or relative residing in a different locality and working with another employer at another place. In the alternative situation postulated the Board would have no difficulty in holding that the accident occurred during a deviation from the route between his place of residence and his place of work. The Board might also add here that nothing in the Act requires the route between the place of residence and the place of work to be the "direct" or "shortest" route between the two points.

The Chairman had correctly appreciated the evidence and had arrived at the right decision on the undisputed facts that were presented before him.

Consider a scenario where they had to take the factory bus to and from work instead – had the accident happened while either one of them was travelling in the bus in the course of conveying them back from work, there could be little to support SOCSO's argument that the bus had not taken the most direct route between his place of work and his residence and that the bus he had taken had deviated from or interrupted its journey in order to send the co-worker home. In the instant case he and the co-worker had to use the motor cycle as a common conveyance much as they would use the bus as a common transporter. There was therefore no question of any deviation or interruption of his journey, merely because he had to carry his co-worker back by their common conveyance – the motor-cycle.

It matters not that the motor-cycle was the personal property of the worker whereas the bus was the property of the factory owner or even a public transport. The objective here was to convey the worker to and from his place of work. Section 24 only speaks of travel to and from the place of work. It does not specify any definite form of transport that the worker must travel in to be covered under the Act.

If the scenario described above is appreciated, it is readily discernible that the worker in the instant case had in fact never deviated from the route in sending his co-worker home, for he had been traveling on a common transport which happened to be his own motor-cycle. It matters not whether he had been taking the "very same route he had taken to work all this while" as the learned Chairman had found, or had taken any other route to reach his destination.

The chairman's finding however, appears to have been premised only on a narrow interpretation of s. 24 of the Act.

But s. 24 is amenable to a much wider purposive construction.

To appreciate the scope of s. 24(2) of the ESSA 1969 one must be able to appreciate the elementary principle of economics that in the small and medium enterprise, labour (in the present context, the worker) constitutes an important factor of production.

Unlike the entrepreneur (in the present context, the employer) who takes profits for his enterprise, the worker takes remuneration for work performed. His resource must necessarily be limited by the pay he takes home. His well being while being employed has to a limited extent to be provided for by legislation. Hence the ESSA 1969 – which provides under s. 24(1) a liberal insurance coverage in respect of injuries sustained by the worker in the course of his employment.

It follows therefore the exclusionary provision under s. 24(2) of the Act must be subjected to the purposive construction that it deserves in line with the objective to provide the worker with the widest possible insurance coverage of his welfare to ensure continuity of production.

If one were to apply the literal meaning to the words "interruption of or deviation from the insured person's journey" appearing in s. 24(2), a worker would be disqualified from making any claim even if he has to attend to the call of nature some distance from the highway in the course of his journey as he would then be guilty of having interrupted or deviated from his journey – an absurdity that could not have been intended by the legislature.

Section 24(2) of the Act must therefore be subjected to the purposive interpretation pursuant to s. 17A of the Interpretation Act 1948 and 1967 which provides as follows:

> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

In my view a worker unlucky enough to meet with an accident while going to or returning from work should be able to make a claim under s. 24 even if he had interrupted or deviated from his journey for any reason whatsoever if the objective of his travel is to reach his place of work or to return home from work, provided the deviation or interruption was not made in furtherance of some other economic pursuit distinct and unrelated to his obligation under the contract of employment he had entered into with the employer – as for instance he had in the course of the journey made a deviation or interruption to undertake another remunerative part-time work – for here it is clear that the worker was under the circumstances undertaking a distinct and unrelated pursuit that could not have served the interest of his employer to whom he was committed to work for and who in turn had provided for his insurance under the Act.

On the other side of the coin he should be held covered even if he had interrupted his journey home from work to visit a sick relative at the hospital or if he had stopped at the market to purchase provisions for it cannot be gainsaid that the main objective of his journey was to reach home and was not made in furtherance of any other economic pursuit other than the one which he was already committed to with his employer.

Now to revert to the issue in the instant appeal. It would not have mattered that the worker had made a detour to send a co-worker home. He should be able to make the claim given that the objective of his travel was to return home and the deviation or interruption of the journey was not made in furtherance of some other economic pursuit distinct and unrelated to the employment he had committed himself to with the employer.

For the foregoing reasons, the appeal is dismissed with costs.